

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *Dy* D.C.
05 DEC 22 PM 1:23

LOVE IN ACTION INTERNATIONAL,)
INC.,)
Plaintiff,)
)
v.) No. 05-02724-D/V
)
PHIL BREDESEN, in his official)
capacity as Governor of the)
State of Tennessee; VIRGINIA)
TROTTER BETTS, in her official)
capacity as Commissioner of the)
Tennessee Department of Mental)
Health and Developmental)
Disabilities; ARTHUR HYDE, in)
his official capacity as)
Director of the Office of)
Licensure for the Tennessee)
Department of Mental Health and)
Developmental Disabilities, and)
in his individual capacity;)
PHIL BROWN, in his official)
capacity as West Tennessee)
Licensure Coordinator for the)
Tennessee Department of Mental)
Health and Developmental)
Disabilities, and in his)
individual capacity,
)
Defendants.
)

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD. TENN. DIVISION

ORDER SETTING HEARING

This matter is before the Court pursuant to Defendants' Motion to Dismiss Plaintiff's complaint alleging various constitutional violations related to the Defendants' actions in investigating whether Plaintiff, in conducting its residential ministry, is operating a facility in violation of Tennessee's mental health

This document entered on the docket sheet in compliance
with Rule 53 and/or 79(a) FRCP on *12/23/05*

(1)

licensure requirements. Plaintiff commenced this action on September 30, 2005, seeking damages, injunctive, and declaratory relief. On October 21, 2005, this Court denied Plaintiff's request for a preliminary injunction, finding that such an injunction would be premature given the Defendants' stated decision to forego any planned licensure enforcement action at that time. Subsequently, Defendants filed the instant Motion to Dismiss, asserting that Plaintiff's action should be dismissed pursuant to Fed. R. Civ. P. 12 (b) (1), for lack of subject matter jurisdiction, and 12(b) (6), for failure to state a claim upon which relief can be granted.

It is Defendants' primary contention that, apart from the Plaintiff's claims' general lack of merit, Plaintiff lacks standing to assert such claims in this Court and that such claims also fail for lack of ripeness because Plaintiff has suffered no injury in fact, given that, subsequent to the Defendants' investigation of Plaintiff's ministry, Defendants have advised the Plaintiff that no further action is planned. Defendants also submit that they are entitled to both Eleventh Amendment immunity from suit and qualified immunity in their individual capacities. Plaintiff, however, argues that it has standing and that its action is ripe for consideration because it has suffered, and continues to suffer, injury, including violations of various constitutional rights. Plaintiff asserts that Defendants have caused this continuing injury by compelling, through a perceived threat of prosecution,

Plaintiff's decision to comply with the Defendants' construction of the mental health licensure laws while this litigation remains pending. Thus, given the dispute as to whether Plaintiff has suffered some injury in fact, and whether Plaintiff has self-policed its ministry in order to conform with the Defendants' construction of the mental health licensure laws, the Court finds that a hearing is in order to better clarify the issues of fact contested in the instant motion.

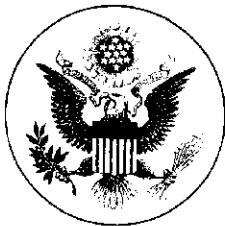
Accordingly, pursuant to L.R. 7.2(c), the Court schedules a hearing on the Defendants' Motion to Dismiss for Tuesday, January 17, 2006, at 2:00 P.M.

IT IS SO ORDERED this 22 day of December, 2005.



BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE



Notice of Distribution

This notice confirms a copy of the document docketed as number 17 in case 2:05-CV-02724 was distributed by fax, mail, or direct printing on December 23, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT